THE HON'BLE SRI JUSTICE K.C. BHANU

On Wednesday, the twenty first day of September

Two thousand and five.

W.P. NO. 13012 of 2005

Prof. P.Jayapal Reddy

…….Petitioner.

And

The Registrar of Mutually Aided Cooperation Societies/District Cooperative dOfficer, Karimnagar District, Collectorate Building, Karimanagar and another.

……Respondents.

O R D E R:

This writ petition is filed by the petitioner for declaring the inaction of the 1st respondent in not initiating steps for rectification of the 2nd respondent's byelaws to bring them in conformity with the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 (for short 'the Act') by considering the petitioner's representation dated 5.5.2005 as being illegal and further to direct the 1st respondent to forthwith initiate appropriate steps for amending the byelaws of the 2nd respondent-cooperative society to enable all the members of the cooperative to participate in the elections for the post of Directors of the 2nd respondent-co-operative.

2) The facts of the case that are necessary to adjudicate in this writ petition are that the 2nd respondent-society has been registered as a 'mutually aided

cooperative society' (for short 'MACS') under the provisions of the Act. The provisions of the Act govern the entire field with regard to mutually aided cooperative societies, their registration, constitution, management, conduct of affairs, regulation by the Registrar and other incidental and ancillary matters. The proposed byelaws are not contrary to the provisions thereof, the Registrar shall register the MACS and also its byelaws under the Act and the said byelaws provide for the manner of conducting elections to the Board of Directors. The byelaws are contrary to the Section 20(2) of the Act and also Bylaw 16(2) and that by virtue of this bylaw the right of every member is to have a say in the election of every Director is taken away and the right of every member is confined to the election of only one Director. Bringing these incongruous inconsistencies to the notice of the 1st respondent, the petitioner submitted a representation to the 1st respondent on 5.5.2005 requesting to initiate appropriate action for rectification of the said byelaws for enabling the continuance of the 2nd respondent as MACS under the Act, but no action is initiated against it. Hence the writ petition.

3) The 1st respondent filed counter affidavit denying the contentions raised in the affidavit, *inter alia*, stating that all the members of the society would participate in the elections and elect the Directors and therefore, the contention of the petitioner that the Board of Directors would not be elected the entire General Body is not correct. It is further contended that the Byelaw 21(13)(2) and 21(13)(2) are not only mutually contradictory but both are contradictory to the provisions of the Section 20(2) of the Act and the Byelaw 16(2) and if the petitioner or other members want to amend the byelaws, they should have bring it to the notice of the managing committee and General Body for taking necessary action for amendment of byelaws suitably. It is further contended that the 1st respondent justified his inaction in not taking any action on the representation of the petitioner to amend the byelaw.

4) The learned counsel for the petitioner contended that the byelaws of the 2nd respondent society should inconformity with the provisions of the Act and if the

byelaws repugnant to the provisions of the Act, the Registrar, ought not to register the same and the Byelaw 21(13)(2) is contrary to the Section 20(2) of Act and the petitioner by representation dated 5.5.2005 brought to the notice of the 1st respondent, but the 1st respondent has not taken any action and hence, he prays to allow the writ petition.

5) On the other hand, the learned counsel for the 1st respondent opposed the same on the ground that it is for the 2nd respondent to amend the byelaws. Unless the byelaws have been amended by the 2nd respondent, the 1st respondent cannot be take any action.

6) The learned counsel for the 2nd respondent contended that it is for the General Body to take decision to amend the byelaws and that when the society was registered in 1995; the petitioner has not raised any objection. Therefore, there are no grounds to interfere with the decision.

7) One of the member of the 2nd respondent filed implead petition also contended that the petitioner has no *locus-standi* to file the writ petition.

8) The Byelaw 21(13)(1) reads as follows:

> "Constituencies shall be formed on admission number basis consisting of as many groups as are equal to the total number of seats on the Board. The members eligible to vote shall be arranged general number-wise. The number of voters in each such constituency should be approximately equal. Any members remaining after such division shall be added to the last part. The members in each such constituency shall elect one director to the Board."

The other Byelaw 21(13)(2) reads as follows:

> "Members belonging to the constituencies from which the Directors of the Board retire at any given elections are eligible to vote at the elections."

On the other hand, Section 20(2) of the Act reads thus:

> "The following matters, among others specified in these byelaws, shall be dealt with by the General Body of the cooperative, namely:
>
> a. Amendments of byelaws.
>
> b. Election and removal of directors."

Another Byelaw 24(6) reads as follows:

> "The members of the Board of Directors shall be elected by the General Body according to the provisions of byelaw No.21".

9) According to the learned counsel for the petitioner, the byelaws are contrary to the Section 22 of the Act and also Bylaw 16(2). By virtue of this bylaw the right of every member is to have a say in the election of every Director is taken away and the right of every member is confined to the election of only one Director.

10) The 1st respondent filed counter affidavit stating that all the members of the society would participate in the elections and elect the Directors and therefore, the contention of the petitioner that the Board of Directors would not be elected the entire General Body is not correct. The stand of the 1st respondent is that Byelaw 21(13)(2) and 21(13)(2) are not only mutually contradictory but both are contradictory to the provisions of the Section 20(2) of the Act and the Byelaw 16(2). If he or other members want to amend the byelaws, they should have bring it to the notice of the managing committee and General Body for taking necessary action for amendment of byelaws suitably by the General Body of the Society as per the Act. Therefore, the 1st respondent justified inaction in not taking any action on the representation of the petitioner to amend the byelaw. In view of the fact, General Body of the Society is only competent authority to

amend the byelaw and that the 1st respondent has no authority to advise the general body.

11) It is specifically stated in the counter affidavit that since the registration of the society, the elections are being conducted through electoral constituencies and also it is in practice that the elections of the Primary Agricultural Cooperative Societies are being conducted through constituencies only in the State registered under the A.P. Co-operative Societies Act, 1964. The society is registered under the Act. The 2nd respondent has been following the same procedure in conducting all elections for the post of directors. The petitioner being a member has not raised his little finger when the same procedure is being followed right from the inception.

12) As seen from the representation dated 5.5.2005, the petitioner has not given any representation to either managing committee or General Body of the 2nd respondent, so as to amend the byelaws, because the General Body is the competent authority to amend the same. As per Clause 15 of the byelaw, it is clear that any amendment to the byelaw shall be made by a resolution of the General Body in accordance with the manner required under Section 10 of the A.P. Mutually Aided Cooperative Societies Act, 1995. There is procedure contemplated under Clause-15 of the byelaw, which has to be followed. So, unless the issue resolved in General Body meeting the question of amending byelaws by the 1st respondent does not arise. It is not the case of the petitioner that he made representation to the General Body and the General Body failed to take any action on his representation so as to amend the byelaw. Therefore, the contention of the learned counsel for the petitioner cannot be accepted.

13) The Writ Petition is devoid of merits and is dismissed. No order as to costs.

Justice K.C.BHANU.

_____ September 2005.

BCS